

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ERIC WITHERSPOON,
PETITIONER,

v.

CIVIL ACTION No. 04-1424

LOIS RUSSO,
SUPERINTENDENT/WARDEN,
AND M. JANE BRADY,
ATTORNEY GENERAL OF
THE STATE OF DELAWARE.
RESPONDENTS.

2006 JAN 12 PM 3:59
U.S. DISTRICT COURT CLERK'S OFFICE
STATE OF DELAWARE

MOTION FOR THE APPOINTMENT OF COUNSEL

Now comes Petitioner, Eric Witherspoon ("Witherspoon"), move this Honorable Court pursuant to the United States Constitution, Due Process Clause, and any other applicable Act or Clause for the appointment of counsel.

As reasons thereof, the right of access to the Court is founded in the Due Process Clause of the United States Constitution and assures that no person will be denied the opportunity to present to the judiciary, violations of fundamental constitutional rights.

Witherspoon is in the custody of the state of Massachusetts ("Mass") Department of Correction ("DOC"), having been transferred to such location by the state of Delaware Prison Officials. Witherspoon has been devoid of Delaware law material and without the assistance of counsel since the denial of his direct appeal, as the Mass. DOC and Delaware Prison Officials have refused to provide Witherspoon with Delaware law material or the assistance of counsel. This refusal effectuated the denial of access to the court and has resulted in Witherspoon's Rule 61 motion (i.e. motion for post-conviction/collateral relief) being dismissed and fostered the denial of his habeas corpus petition by the District

Court.

Witherspoon's habeas corpus petition contains substantive and complex issues, requiring the assistance of counsel and this is exacerbated by the fact that Witherspoon is only allowed approximately three hours a week in the law library.

The United States Constitution requires in such circumstances where the access to law books and other resources are insufficient, the assistance of counsel is indispensable. See Bounds v. Smith, 430 U.S. 817, 825 (1977). Therefore it is within the authority and the discretion of the Federal Court to correct violation(s) of the United States Constitution which emanates from either state court proceedings or federal proceedings, which is the case here.

Wherefore, Witherspoon respectfully submits that law and justice requires that this motion be GRANTED. Witherspoon also request for a hearing on this motion.

Respectfully submitted

by,



Eric Witherspoon, pro se
SBCC
Post Office Box 8000
Shirley, Ma 01464

Dated: January 4, 2006



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